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IN THE

Supreme Court of the United States

October Term, 1968

No. 120

ANTHONY F. PALMISANO, LYDIA MAE PALMISANO, and MADONNA AGATHA HALE,

Petitioners,

vs.

BALTIMORE COUNTY WELFARE BOARD,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Maryland

BRIEF FOR RESPONDENT IN OPPOSITION

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Opinions Below.

The opinion of the Circuit Court for Baltimore County (App. B5) is not reported. The opinion of the Court of Appeals of Maryland, set forth in Appendix A of the Petition, is reported at 238 A.2d 251 (Md. 1968).

Statutes and Rules Involved.

The pertinent text of the statutes and rules involved is set forth in Appendix A, infra, pp. 1-4. The statutes and rules are contained in the Annotated Code of Maryland, 1957 as follows: Art. 16, Sec. 72, Vol. 2, p. 86; Art. 16, Sec. 74(h), Vol. 2, p. 88; Rule D71b, Vol. 9B, p. 379; Rule D73, Vol. 9B, p. 381; Rule D74a, b, and c1, Vol. 9B, pp. 381-382; Rule D75a, Vol. 9B, p. 382; Rule D78a, Vol. 9B, p. 384.

Statement.

In July of 1964, the Baltimore County Welfare Board (hereinafter called "Welfare Board") was requested by Petitioner Madonna Agatha Hale (hereinafter called "Donna") to plan for adoption placement of her child, Madonna Peggy Hale, born May 28, 1964. Donna was 17 years of age, unmarried, and a high school student at the time of the child's birth.

The Welfare Board, an agency of the State of Maryland, customarily initiates adoption planning for a child by obtaining guardianship with the right to consent to adoption of the child. After obtaining guardianship, the Welfare Board proceeds to place the child in an adoptive home. Under the Maryland Rules of Procedure, Annotated Code of Maryland, 1957, Vol. 9B, the procedure for obtaining guardianship with the right to consent to adoption is as follows:

(1) the filing of a consent to adoption, signed and verified by the mother of the child born out of wedlock, Rule D73, p. 381, (App. A2);

(2) the filing of a petition for guardianship with the right to consent to adoption, Rule D71b, p. 379 (App. A2);

(3) service of a show cause order on the natural mother, which order states that a petition for guardianship with the right to consent to adoption has been filed, the name of the person for whom such guardian is to be appointed, the date on or before which cause to the contrary shall be shown,

and the date on or before which service shall be made, Rule D74a, b, c, pp. 381-382 (App. A2-3);

(4) appointment by the court of a guardian *ad litem*, who must be a member of the bar or other responsible and disinterested person, for the natural parent who is under 18 years of age, Rule D75a, p. 382 (App. A3);

(5) verification by the guardian *ad litem* that the natural parent understands the legal effect of the proceeding and consents thereto, Rule D75a, pp. 382-383 (App. A3);

(6) the signing of a guardianship decree at the expiration of the show cause date, Rule D78a, p. 384 (App. A4).

The passing of a decree of guardianship with the right to consent to adoption terminates parental rights. Thereafter, a parent is prohibited from withdrawing his consent to adoption. Sec. 72 and 74(h), Art. 16, Annotated Code of Maryland, 1957, Vol. 2, pp. 86, 88 (App. A1-2).

Pursuant to Donna's request that the Welfare Board plan for the adoption placement of her child, the Welfare Board prepared to petition for guardianship of the child. Donna signed the required consent to adoption on July 31, 1964. At that time, Donna was told by her social worker, Mrs. Genevieve Parlett, that signing the consent constituted the first step in the guardianship proceedings; that further steps would be required, including the signing of a show cause order and the appointment of a guardian *ad litem;* and that the appointment of a legal guardian for the child would be the final act (R.35-36).

On September 10, 1964, a petition for guardianship with the right to consent to adoption of Madonna Peggy Hale was filed

by the Baltimore County Welfare Board, and Donna was served with a show cause order by Mrs. Parlett. Mrs. Parlett explained to Donna that she had until the time on the show cause order to change her mind or object, either in person or by attorney, to the guardianship proceeding. (R.64-65).

On the same day, a guardian *ad litem*, John Farrell, was appointed. Mr. Farrell was and is a member of the bar, employed by the Probation Department of the Circuit Court for Baltimore County. When Mr. Farrell interviewed Donna, he informed her that "once the decree was signed in this proceeding, that it would be absolutely final, that she would be no more relation to the child than (he) was, that this was final for all purposes and all times." (R.93-94).

Donna affirmed to Mr. Farrell that she would still be willing to execute a consent like the one she had previously signed. (R.97-98). This consent stated that the natural mother,

> "being unable to provide her (the child) with the proper care, do(es) hereby request the Baltimore County Welfare Board to plan for adoption placement of this child. I voluntarily surrender Madonna Peggy Hale to the Baltimore County Welfare Board, thereby relinquishing all of my parental rights and privileges. I have made the decision after careful consideration and my consent to adoption is given of my own free will and volition without any undue influence being exerted upon me and without any promise of compensation or reward either expressed or implied being extended to me. I hereby waive notice of any proceeding relative to the adoption of my child. I hereby agree to do any and all other

actions that may be required to facilitate the adoption of the child." (App. B7-8).

A decree granting guardianship of Madonna Peggy Hale to the Baltimore County Welfare Board was filed October 20, 1964. The child had been placed in a foster home, and some months following the granting of the guardianship decree, her foster parents petitioned to adopt her. A final adoption decree was passed November 15, 1965.

Petitioners' motion to strike was filed February 10, 1966, over a year after the signing of the guardianship decree and three months after the signing of the adoption decree.

Although living with her parents before, during and after her pregnancy, Donna kept her condition secret from her parents. At Donna's insistence, her parents were not notified of the guardianship proceedings by the Welfare Board. Donna, Ralph Hale (the natural father of the child), and Mrs. Eldridge, a friend of the Palmisanos', all represented to the Baltimore County Welfare Board that Mrs. Palmisano was "an impossible woman who . . . cuts a wide swath socially but makes everybody around her miserable," who had rejected Donna, who in fact blamed Donna for her mother's miscarriage of a baby boy, and who was an emotionally disturbed woman. (Pet. App. A6).

At no time during the trial below was this description of Mrs. Palmisano repudiated by Petitioners or their witnesses. At no time did Donna testify that she was misinformed, inadequately informed, mistaken, unaware of what she was doing during the course of the guardianship proceedings, or that she did not wish her child to be adopted. In fact, Donna did not choose to testify at all, although she was free to do so.

Finding that all procedural requirements for obtaining the guardianship had been met and that Donna was aware of the

legal consequences of her acts, the lower court denied Petitioners' Motion to Strike. The Court of Appeals of Maryland affirmed the decision of the lower court.

The decisions below are correct. There is no conflict or other ground justifying further review by this court.

ARGUMENT

I.

No Federal Question Has Been Preserved for Review by This Court

Neither of the questions presented for review in the Petition was raised in the proceedings below. The sections of pleading set forth on page 6 of the Petition to show how federal questions were presented relate to the proper interpretation of state law, and in no way refer to any federal issue or denial of due process of law.

The sole reference to due process of law cited by Petitioners from the proceedings below is contained in the quotation from the pleadings on page 7 of the Petition, which reads as follows:

> ". . . Anthony F. Palmisano and Lydia Mae Palmisano were at all times available to process and were denied their parental rights and duties to comfort and guide their minor daughter. . . in an hour of her greatest need, in violation of their constitutional rights and of due process of law. . . "

This issue is now, of course, moot. No new decision could restore the lost rights complained of, Donna's "hour of greatest need" having long since passed, "and this Court does not sit to decide arguments after events have put them to rest." *Doremus v. Bd. of Education*, 342 U.S. 429, 433. However, even if the issue were not moot, it could not be considered by this Court

because it was not presented to the Maryland Court of Appeals for a ruling. *Stembridge v. Georgia*, 343 U.S. 541, 546.

It is no oversight that Petitioners have failed to set forth pertinent quotations or summaries thereof from their argument to the Court of Appeals of Maryland to show that the federal questions were timely and properly raised as required by Supreme Court Rule 23.1 (f). The simple fact is that such questions were never mentioned in the appeal below.

The argument under the second question in Petitioners' brief to the Court of Appeals purportedly preserved the constitutional issues for review by this Court. Yet that question asked only, "Can an infant, under disability, consent to anything absent the approval of her natural guardian?", and the entire argument under the question was devoted, not to constitutional issues, but to the proper interpretation of state law. Not once in the course of the argument was reference made to the federal constitution or due process of law, nor was there any intimation that federal questions might be involved.

It is settled that this Court will not pass upon the constitutionality of a state statute before the state courts have had an opportunity to do so. *Adler v. Bd. of Education*, 342 U.S. 485, 496. Therefore, no federal question is properly before this Court.

II.

No Substantial Federal Question Has Been Raised in the Petition

Assuming, *arguendo*, that the questions presented in the Petition were seasonably raised and preserved for review, they do not present a substantial federal issue.

(a) The first question raised by the Petition asks whether due process requires notice to the natural guardians of a minor mother before a mother can consent to the adoption of her illegitimate child. It is not clear, under this question, whether Petitioners are challenging the constitutionality or the interpretation of the statute by the Maryland Courts. If Petitioners are challenging the interpretation of the statute, then it is apparent that they have no basis for this appeal, as this Court is bound by the interpretation of Maryland statutes by the Maryland Court of Appeals. *Cramp v. Bd. of Public Instruction*, 368 U.S. 278, 285; *Kingsley Corp. v. Regents of U. of N.Y.*, 360 U.S. 684, 688.

If Petitioners are challenging the constitutionality of the statute, then they have cited neither reason nor authority which supports their position. The reason assigned for review of the first question is that Donna was denied due process of law when a guardian was appointed for her child without the knowledge and consent of her parents and without notice to her parents of the guardianship proceedings. The necessity for notice to the natural guardians of a minor mother before the mother can *consent* to the adoption of her illegitimate child, the sole issue presented by the first question, is nowhere mentioned.

Furthermore, the cases and authorities cited by Petitioners in support of their position are immaterial to the question presented. At most, the citations affirm that parents should receive notice of any proceeding relative to the custody or adoption of their children, and that the parent - child relationship should be protected from arbitrary governmental intrusion.

With these principles, Respondent heartily agrees. The Maryland legislature has been meticulous, in accordance

with the law cited by Petitioners, in providing for notice to parents in adoption and guardianship proceedings. Rule D74 c1, Annotated Code of Maryland, 1957, Vol. 9B, p. 382, states:

> "If the person to be adopted, or for whom a guardian with the right to consent to adoption is to be appointed, is a minor, the show cause order shall be served on the parents, or the mother of a child born out of wedlock, in the manner provided by Rule 104 (Service of Process – Generally), or Rule 105 (Process by Publication), whichever shall apply. An additional copy of the show cause order shall also be served, in the manner provided by Rule 119 (Service of Process – Person under Disability), where – both parents are under disability or the mother of a child born out of wedlock is a person under disability and their or her consent is not filed with the petition. No copy of the petition shall be served or published."

The committee note immediately following this Rule establishes that the requirements of due process were carefully considered in the drafting of the Rule. The note explains:

> "The purpose of this Rule is to assure the protection of due process to the natural parent whose rights will be terminated by the proceeding and at the same time to give adopting parents and adopted child the protection of a binding decree. Thus service of the show cause order on the natural parent may not be waived by the parent. Where the natural parent of an infant has previously consented to termination of parental rights, however, there does not seem to be any need to inform the parents of such natural parent of the proceeding, even if the natural parent is a person under disability."

In the instant case, the natural parent was unquestionably served with notice.

Petitioners seem to complain that a failure to require notice to *grandparents* in proceedings relative to the adoption or guardianship of their grandchildren is unwarranted governmental intrusion of the relationship between parent and child. Actually, Petitioners are complaining a *lack* of intrusion.

They are maintaining, contrary to the authority they cite, that a minor mother cannot be free to decide the future of her child for herself, but that the state must compel her to submit to the decision of her parents in this matter—even if their decision results in a *forced* parent - child relationship harmful to both mother and child.

Petitioners are further maintaining, in effect, that the state must force a disclosure of facts by a minor to her parents, even when such disclosure could result in emotional or physical injury to the minor. This position runs counter to the whole thrust of the Maryland law relating to minors, which is based upon the principle that the welfare of the child is paramount, even over the rights of its parents. *Burns v. Bines*, 189 Md. 157, 162, 55 A.2d 487, 489, (1947), *Winter v. Director of Department of Welfare*, 217 Md. 391, 395-396, 142 A.2d 81, 83, cert. denied, 358 U.S. 912. The Maryland law is entirely consistent with the position of this Court, which has affirmed that:

> ". . . neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as parens patriae may restrict the parent's control. . ." *Prince v. Massachusetts*, 321 U.S. 158, 166.

The Court of Appeals of Maryland did not find that the failure of the Welfare Board to notify the grandparents of the guardianship proceedings denied any protection of the

law to Donna. On the contrary, under the circumstances of this case, where Donna's mother was represented to be abusive and emotionally disturbed, the Court held that "Mrs. Parlett, the social worker, was under no obligation to inform Donna's parents and to do so would, in fact, derogate from her duty to protect the interests of Donna and her baby." (Pet. App. A6).

While the Maryland statute does not *require* notice to grandparents in guardianship proceedings, neither does it *prohibit* such notice. If, in this case, Donna was denied a right to the "guidance, counsel, and comfort" of her parents, or if her parents were denied a right to "guide and comfort" their daughter, that right was denied not by the law but by Donna herself. She was living with her parents and was at all times free to confide in them, yet she chose not to do so. Rather, she reportedly threatened suicide if they were informed of her pregnancy (R.133-134). Petitioners have cited no authority, and Respondents know of none, which would compel notice to grandparents in such a situation.

(b) The second question presented in the Petition asks whether a state statute which allows a guardian *ad litem* for a minor mother to supersede the rights of natural parents without determining that the natural parents and guardians are unfit, is repugnant to due process of law. This characterization of the statute begs the question, inasmuch as there is no basis for assuming that a guardian *ad litem* supersedes the rights of natural parents.

Under the Maryland guardianship statute, the function of a guardian *ad litem* is strictly limited, as the guardian is only required to investigate and report to the Court whether a minor parent understands the legal effect of the proceeding and consents thereto (App. A3). A guardian *ad litem* must be appointed for a minor mother whether or not her parents know of the

proceeding – not in derogation of the rights of her parents, but as an additional protection for the minor. His report assures the Court that the minor has arrived at her decision knowledgeably and free from coercion by parents, relatives – or institutions.

Petitioners unaccountably assume that the appointment of such a guardian deprives the natural parents of the custody of their child,[1] even though, by their own admission, Donna lived with and was supported and maintained by her parents throughout the entire guardianship proceeding.

Clearly, the appointment of a guardian *ad litem* neither deprives a parent of the custody of his child nor supersedes parental rights. Since the second question assumes non-existent law and facts, it does not present a substantial issue for consideration by this Court.

Moreover, even assuming that the statute deprived Donna's parents, without due process of law, of rights which they possessed by virtue of her minority, that issue has become moot. Any such rights were extinguished when Donna attained her majority on March 26, 1968 (Pet. 4).

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1 Page 14 of the Petition contains the statement: " . . . a statute divesting a natural parent and guardian of the custody of his minor daughter is a denial of due process of law. . ."

Conclusion.

Neither of the questions presented by the Petition was raised or preserved in the proceedings below. Petitioners have failed to cite either reason or authority which supports review of the first question presented; the second question assumes non-existent law and facts. Neither question presents a substantial federal issue. Therefore, the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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